

DEATH PENALTY/LIFE WITHOUT PAROLE CASE

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

FILED
Clerk Superior Ct., Gordon County

MAY 19 2005

**Brian Brannon
Clerk**

STATE OF GEORGIA,)
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Indictment No. 16471

v.

JERRY WILLIAM JONES,)
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_____)

**MOTION TO ENJOIN THE VICTIM'S FAMILY FROM SHOWING EMOTION
IN THE COURTROOM WHILE SITTING AS SPECTATORS**

JERRY WILLIAM JONES, through undersigned counsel, respectfully moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of Georgia, international law, as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, and jurisprudential authority enjoin the victim's family from showing emotion in the courtroom while sitting as spectators.

In support, counsel states:

1

Mr. Jones is on trial for his life. The State, through the District Attorney, has announced its intention to kill Mr. Jones, a human being, by lethal injection.

2.

"The fundamental respect for humanity underlying the Eighth Amendment's prohibition

against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (citations omitted). It is well established that when a defendant's life is at stake, a court must be "particularly sensitive to insure that every safeguard is observed." Gregg v. Georgia, 428 U.S. 153, 187 (1976). This heightened standard of reliability is "a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different." Ford v. Wainwright, 477 U.S. 399, 411 (1986).

Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Woodson v. North Carolina, 428 U.S. 280, 305 (1976). The United States Supreme Court has repeatedly emphasized the principle that because of the exceptional and irrevocable nature of the death penalty, "extraordinary measures" are required by the Eighth and Fourteenth Amendments to ensure the reliability of decisions regarding both guilt and punishment in a capital trial. Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring). See also Beck v. Alabama, 447 U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586, 604 (1978); and Gardner v. Florida, 430 U.S. 349, 357-58 (1977).

3.

For the victim's family to sit in the Courtroom and cry or show other types of emotions during the course of the trial will cause the jury to be sympathetic toward the alleged victim's family and will cause them to relate to the family in such a manner that it will be highly prejudicial to Mr. Jones

and will deprive him of a fair and impartial jury.

4.

To allow the alleged victim's family and friends to sit in the Courtroom and show these emotions would deprive Mr. Jones of a fair and impartial trial and would deny him due process of law as guaranteed to him under the Constitution of the United States and the corresponding provisions of the Constitution of the State of Georgia.

5.

For the Court to instruct the victim's family and friends to conduct themselves in the Courtroom just like any other uninterested spectator and not to sit directly before the jury will in no way prejudice the State's case and will in no way interfere with a public trial.

6.

The Mississippi Supreme Court has held that emotional behavior which prejudices the accused has no place in a capital prosecution. In disapproving the presence of the victim's daughter prominently before the jury, the Court held that this:

presented the jury with an image of a prosecution acting on behalf of [her] . . . [S]uch an erroneous view can all too easily lead to a verdict based on vengeance and sympathy as opposed to reasoned application of rules of law to the facts.

Fuselier v. State, 468 So.2d 45, 53 (Miss. 1985). Any show of emotion by the alleged victim's family in this case will create a substantial risk of a death penalty founded on such irrelevant factors.

7.

3

Allowing the victim's family to show emotion in the courtroom would deprive Mr. Jones of the independent state and federal constitutional guarantees to: a fair trial and right to present a defense, cross-examination and confrontation of adverse witnesses and evidence, the effective assistance of counsel, due process of law, to equal protection of the laws, to freedom from cruel and unusual punishment, and a reliable verdict and sentence. Ga. Const. art. I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII; U.S. Const. amend. V, VI, VIII and XIV.

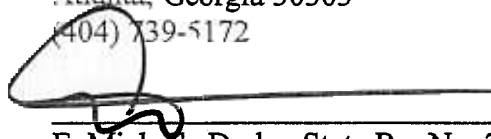
WHEREFORE, JERRY WILLIAM JONES requests that this Court instruct the victim's family and friends, prior to voir dire, not to sit directly before the jury and to restrain from making any show of emotion whatsoever in the Courtroom.

DATED this 12 day of May, 20 15.

Respectfully Submitted,



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Counsel for Jerry Jones

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been mailed to The Office of the District Attorney for Gordon County via first-class United States Postal Service this 19th day of

May, 2005.



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ORDER

Upon consideration of Mr. Jones's *Motion to Enjoin the Victim's Family from Showing Emotion in the Courtroom While Sitting as Spectators*, the Court being otherwise sufficiently advised, and good grounds appearing therefore,

IT IS HEREBY ORDERED AND DECREED, that this Court will instruct the victim's family and friends, prior to voir dire, not to sit directly before the jury and to restrain from making any show of emotion whatsoever in the Courtroom.

SO ORDERED this day of _____, 20____.

The Honorable G. Carey Nelson
Chief Judge Superior Court, State of Georgia

Prepared by:
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Counsel for Jerry Jones